



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0023]

RIN 1625-AA00

Safety Zone, MBTA Railroad Bridge Replacement Project - Annisquam River, Gloucester, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters within 100 yards of the Massachusetts Bay Transportation Authority (MBTA) Railroad Bridge, at mile 0.7, across the Annisquam River, Gloucester, Massachusetts, from December 1, 2019, through June 30, 2023. The temporary safety zone is necessary to protect personnel, vessels and the marine environment from potential hazards created during the replacement project of the MBTA Railroad Bridge. When enforced, this rule would prohibit vessels and persons from being in the safety zone unless authorized by the Captain of the Port (COTP) Boston or a designated representative.

DATES: This rule is effective from December 1, 2019, through June 30, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Type USCG-2019-0023 in the "SEARCH" box and click "SEARCH." Click on Open Docket

Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or e-mail Mark Cutter, Waterways Management Division, U.S. Coast Guard Sector Boston, telephone 617-223-4000, e-mail mark.e.cutter@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
MBTA	Massachusetts Bay Transportation Authority
NPRM	Notice of proposed rulemaking
NAD 83	North American Datum 1983
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The MBTA notified Sector Boston that there will be times in which the narrow navigable channel underneath the MBTA Railroad Bridge, Annisquam River, Gloucester, Massachusetts, will need to be closed for the replacement of submarine cables, abutment construction, and span replacement.

In response, on August 19, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone, MBTA Railroad Bridge Replacement Project – Annisquam River, Gloucester, MA” (84 FR 42869). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended on September 18, 2019, we received zero comments.

The replacement project started in the fall of 2018 and is expected to be completed in December 2022. The COTP Boston determined that the potential hazards associated with the replacement of the submarine cables, abutment construction, and span replacement will be a safety concern for anyone within the work area. This temporary safety zone would be enforced during the replacement of the submarine cables, abutment construction, and span replacement or when other hazards to navigation arise. No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP Boston or a designated representative.

The exact times of any waterways closures are unknown. However, every effort is being made by the MBTA and contractor to schedule these closures during the winter months when boating traffic is minimal. The Coast Guard will notify the public of closures through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, Local Notice to Mariners and through the Gloucester Harbormaster's network. The Coast Guard will issue a Safety Marine Information Broadcast (SMIB) via marine channel 16 (VHF-FM) seven days in advance of the enforcement of the safety zones.

This rulemaking is to protect personnel, vessels, and the marine environment from potential hazards created during the replacement project of the MBTA Railroad Bridge, at mile 0.7, across the Annisquam River, Gloucester, Massachusetts. This rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP Boston and has determined that potential hazards associated with the replacement

of the submarine cables, abutment construction, and span replacement will be a safety concern for anyone within the work area or anyone transiting within 100 yards of the MBTA Railroad Bridge. The purpose of this rule is to ensure the safety of vessels and personnel within 100 yards of the MBTA Railroad Bridge before, during, and after the replacement of the submarine cables, abutment construction, and span replacement.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received zero comments on the NPRM published August 19, 2019. The only regulatory text change in this rule is the start date is moved from November 1, 2019 to December 1, 2019. The contractor has stated that they are behind schedule and would not need the safety zone prior to December 1, 2019.

This rule establishes a safety zone from 12:01 a.m. on December 1, 2019, to 11:59 on June 30, 2023. While the safety zone would be effective throughout this period, it would only be enforced during periods when work barges and cranes will be placed in the navigable channel or when other hazards to navigation exist. Any closure is expected to last less than two weeks. The safety zone would include all navigable waters within 100 yards of the MBTA Railroad Bridge, at mile 0.7, across the Annisquam River, Gloucester, Massachusetts. During times of enforcement, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP Boston or a designated representative. The Coast Guard will notify the public of closures through the Massachusetts Bay Harbor Safety Committee meetings, Boston's Port Operators Group meetings, Local Notice to Mariners and through the Gloucester Harbormaster's network. The Coast Guard will issue a Safety Marine Information Broadcast (SMIB) via

marine channel 16 (VHF-FM) seven days in advance of the enforcement of the safety zones.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time of year of the safety zone. There may be a time during the boating summer season that the safety zone needs to be enforced. However, the MBTA and contractor are making all attempts to schedule these needed closures during the winter months. We expect the adverse economic impact of this temporary rule to be minimal. We will provide ample notice of the safety zone effective dates and vessels will be able to enter the safety zone when construction equipment is not occupying the channel. Although this regulation may have some adverse impact on the public, the potential impact will be minimal because the boating season for vessels on the Annisquam usually concludes in mid-October and

consequently the amount of traffic in this waterway during the effective period for the safety zone is limited to a few commercial lobstermen. The Gloucester Harbormaster will be allowing the lobstermen to moor their boats at the town docks on the harbor entrance side during periods of enforcement, which will allow the lobstermen to transit to their lobster gear with no impact. If a summer time closure is needed, with the exception of an emergency, we will coordinate with the MBTA, contractor, and Harbormaster to ensure that all alternatives are explored, the duration is of the shortest possible timeframe, and a minimum of two weeks notification are given to the boating public via Local Notice to Mariners, Safety Marine Information Broadcast via marine channel 16 (VHF-FM) and through the Gloucester Harbormaster network.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone for the navigable waters within 100 yards of the MBTA Railroad Bridge, at mile 0.7, across the Annisquam River, Gloucester, Massachusetts, from December 1, 2019 through June 30, 2023 for the replacement of the bridge. The safety zone will only be enforced during periods when

work barges and cranes will be placed in the navigable channel or when other hazards to navigation arise. As discussed in our pre-construction meeting, any closure is expected to be of less than a two-week duration and all attempts are being made by the MBTA and contractor to schedule these closures during winter months when boating traffic is minimal. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0023 to read as follows:

**§165.T01-0023 Safety Zone; MBTA Railroad Bridge Replacement Project -
Annisquam River, Gloucester, Massachusetts.**

(a) Location. The following area is a safety zone: all navigable waters within 100 yards of the Massachusetts Bay Transportation Authority (MBTA) Railroad Bridge, at mile 0.7, across the Annisquam River, Gloucester, Massachusetts.

(b) Enforcement period. This section is enforceable from 12:01 a.m. on December 1, 2019, to 11:59 p.m. on June 30, 2023.

(c) Definitions. As used in this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, petty officer, or any Federal, state, or local law enforcement officer who has been designated by the Captain of the Port (COTP) Boston, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this section.

(2) *Official patrol vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Boston to enforce this section.

(d) Regulations. When this safety zone is enforced, the regulations in paragraphs (d)(1) and (2) of this section, along with those contained in § 165.23 apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the COTP Boston or the COTP's designated representatives. However, any person or vessel permitted to enter the safety zone must comply with the directions and orders of the COTP Boston or the COTP's designated representatives.

(2) To obtain permission required by this section, individuals may reach the COTP Boston or a COTP-designated representative via Channel 16 (VHF-FM) or 617-223-5757 (Sector Boston Command Center).

(e) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: November 21, 2019.

Eric J. Doucette
Captain, U.S. Coast Guard
Captain of the Port Boston

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